

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

BROWARD PSYCHOLOGY, P.A.,  
individually and on behalf of all others  
similarly situated,

*Plaintiff,*

v.

UNITED HEALTHCARE SERVICES, INC.,  
a Minnesota corporation,

*Defendant.*

Case No. 0:18-cv-61028

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Broward Psychology, P.A. (“Broward Psychology” or “Plaintiff”) brings this class action against Defendant United HealthCare Services, Inc. (“United HealthCare” or “Defendant”), to stop its practice of sending unauthorized and unwanted fax advertisements, and to obtain redress for all persons and entities similarly injured by its conduct. Plaintiff alleges as follows upon personal knowledge as to itself and its own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by its attorneys.

**NATURE OF THE ACTION**

1. This case challenges United HealthCare’s practice of sending unsolicited faxes to doctors’ offices.
2. The faxes advertise the commercial availability and quality of “United HealthCare benefit plans,” including “Insurance coverage,” “Administrative services,” and “Behavioral health products.” The faxes also advertise the availability of United HealthCare products and “service[s] for care providers,” including United HealthCare’s “Link” tool and its training webinars.

3. Defendant United HealthCare sent the faxes at issue to Plaintiff and the Class despite: (i) having no established business relationship with them; (ii) never receiving the recipients' consent to send them such faxes; and (iii) that none of the faxes sent contained required opt-out notices.

4. As such, Defendant's fax advertisements violate the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), and caused Plaintiff and putative members of the Class to suffer actual harm, including the aggravation and nuisance of receiving such faxes, the loss of use of their fax machines during the receipt of such faxes, and increased labor expenses.

5. Accordingly, Plaintiff seeks an injunction requiring Defendant to cease all unauthorized fax-based marketing activities, as well as an award of actual and/or statutory damages, along with costs.

#### **PARTIES**

6. Plaintiff Broward Psychology, P.A. is a Florida professional association with its principal place of business in Hollywood, Florida.

7. Defendant United HealthCare Services, Inc. is a Minnesota corporation with its principal place of business in Minnetonka, Minnesota.

#### **JURISDICTION & VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA"), a federal statute for which there is federal question jurisdiction.

9. The Court has personal jurisdiction over Defendant and venue is proper in this District because the wrongful conduct giving rise to Plaintiff's cause of action occurred in this District and because Plaintiff resides in this District.

### COMMON FACTUAL ALLEGATIONS

10. Defendant United HealthCare is a leading health insurer that offers a variety of insurance plans and services to group and individual consumers nationwide.

11. As part of an overall marketing plan to advertise its programs and services, United HealthCare sends unsolicited faxes to doctors and their organizations. A copy of the fax advertisement received by Plaintiff is attached as Exhibit A.

12. The unsolicited faxes advertise the commercial availability and quality of United HealthCare's "Online self service [tools] for providers," including: (a) "Link," United HealthCare's "most powerful" tool that allows doctors to "transact[]" online with United HealthCare to "Save Time and Increase Productivity," maintain "Superior Documentation," and "Save on Paper Costs"; and (b) United HealthCare's training webinars.

13. The unsolicited faxes also advertise the commercial availability and quality of United HealthCare's offerings to consumers, including doctors and their organizations, including: (a) "Insurance coverage provided by and through United HealthCare Insurance Company, All Savers Insurance Company, or their affiliates"; (b) "Health Plan coverage provided by United HealthCare of Arizona, Inc., UHS of California DBA United HealthCare of California, United HealthCare Benefits Plan of California, United HealthCare of Colorado, Inc., United HealthCare of Oklahoma, Inc., United HealthCare of Oregon, Inc., United HealthCare of Texas, LLC, United HealthCare Benefits of Texas, Inc., United HealthCare of Utah, Inc. and United HealthCare of Washington, Inc. or other affiliates"; (c) "Administrative services provided by United HealthCare Services, Inc., OptumRx, OptumHealth Care Solutions, Inc., Oxford Health Plans LLC or their affiliates"; and (d) "Behavioral health products [which] are provided by U.S. Behavioral Health Plan of California (USBHPC), United Behavioral Health (UBH) or its

affiliates.”

14. The fax advertisements, however, fail to provide recipients with proper opt-out notice information required by the TCPA and implementing regulations. Specifically, the faxes fail to provide notice identifying a fax number and domestic contact telephone number for fax recipients to transmit their opt-out requests.

15. Defendant United HealthCare sends these fax advertisements to consumers with which it has no existing business relationship, and without express invitation or permission, in violation of the TCPA.

16. United HealthCare uses a fax machine, computer, or other device to send the fax advertisements at issue.

#### **FACTS SPECIFIC TO PLAINTIFF BROWARD PSYCHOLOGY**

17. On May 5, 2018 at approximately 9:57 am, United HealthCare used a fax machine to send an unsolicited fax advertisement to Plaintiff. A copy of the fax advertisement is attached as Exhibit A.

18. The fax advertisement promoted the commercial availability and quality of United HealthCare’s goods and services, which doctors and their organizations are among the consumers of.

19. The fax advertisement failed to contain the required opt-out notice identifying a fax number and telephone number for fax recipients to transmit their opt-out requests.

20. Plaintiff has never communicated with United HealthCare regarding its goods or services, has never had a business relationship with United HealthCare, and has never provided United HealthCare with its consent to send it advertisements by fax or otherwise.

### CLASS ACTION ALLEGATIONS

21. **Class Definitions:** Plaintiff Broward Psychology brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) individually and on behalf of a Class of similarly situated individuals defined as follows:

All persons and entities who (1) on or after four years prior to the filing of the initial complaint in this action, (2) received a telephone fax advertisement, (3) sent from or on behalf of United HealthCare, (4) and from whom United HealthCare (a) did not have a record of prior express consent to send the fax advertisements or (b) claims to have obtained consent in the same manner as it claims to have obtained consent from plaintiff.

The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the class definitions following appropriate discovery.

22. **Numerosity:** The exact size of the Class is unknown and unavailable to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant faxed unsolicited advertisements to thousands of individuals and entities who fall into the definition of the Class. Class membership can be easily determined from Defendant's records.

23. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff is a member of the Class, and if Defendant violated the TCPA with respect to

Plaintiff, then it violated the TCPA with respect to the other members of the Class. Plaintiff and the Class sustained damages as a result of Defendant's uniform wrongful conduct.

24. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) How Defendant gathered, compiled, or obtained the fax numbers of Plaintiff and the Class;
- b) Whether Defendant's faxes advertised the commercial availability or quality of property, goods, or services;
- c) Whether Defendant sent the fax advertisements without first obtaining Plaintiff and the Class's prior express permission or invitation to do so; and
- d) Whether Defendant's conduct was willful such that Plaintiff and the Class are entitled to treble damages.

25. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

26. **Policies Generally Applicable to the Class:** This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's practices challenged herein apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law

applicable only to Plaintiff.

27. **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy given that joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions ensured.

**FIRST CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227**  
**(On Behalf of Plaintiff and the Class)**

28. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

29. The TCPA makes it unlawful for any person to "use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement. . . ." 47 U.S.C. § 227(b)(1)(C).

30. The TCPA defines "unsolicited advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." 47

U.S.C. § 227(a)(5).

31. The faxes sent by Defendant advertised the commercial availability and quality of its goods and services and were therefore commercial in nature, constituting advertisements under the TCPA.

32. Defendant sent the fax advertisements at issue to Plaintiff and other members of the Class without their prior express invitation or consent, and despite the lack of an existing business relationship between it and members of the Class.

33. By sending the unsolicited fax advertisements to Plaintiff and other members of the Class without their prior express invitation or permission, Defendant violated 47 U.S.C. § 227(b)(1)(C).

34. As a result of Defendant's conduct, Plaintiff and the other members of the Class suffered actual damages, including the conversion or loss of paper and toner consumed in the printing of the faxes, the loss of use of the recipients' fax machines during the time required to receive, review and route the unauthorized faxes, as well as increased labor expenses.

35. Plaintiff and the other members of the Class are therefore entitled to a minimum of \$500 in damages for each violation under 47 U.S.C. § 227(b)(3)(B). To the extent Defendant's misconduct is determined to be willful, the Court should treble the amount of statutory damages under 47 U.S.C. § 227(b)(3).

36. Additionally, as a result of Defendant's unlawful conduct, Plaintiff and the other members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A), to ensure that Defendant's violations of the TCPA do not continue into the future.



### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Broward Psychology, P.A., on behalf of itself and the Class, prays for the following relief:

- A. An order certifying the Class as defined above, appointing Broward Psychology, P.A. as the representative of the Class, and appointing its counsel as Class Counsel;
- B. An order declaring that Defendant's actions, as set out above, violate the TCPA;
- C. An order declaring that Defendant's faxes constitute unsolicited advertisements, that they lacked the required opt-out language, and that Defendant sent the faxes without first obtaining prior express invitation or permission of the recipients, and enjoining Defendant from further violations, and otherwise protecting the interests of the Class;
- D. An award of statutory damages;
- E. An award of pre-judgment interest and costs; and
- F. Such further and other relief the Court deems just and proper.

### JURY DEMAND

Plaintiff requests a jury trial.

Dated: May 8, 2018.

*/s/ Avi R. Kaufman*

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Avi R. Kaufman  
Florida Bar No. 84382  
KAUFMAN P.A.  
400 NW 26<sup>th</sup> Street  
Miami, Florida 33127  
Telephone: (305) 469-5881  
Email: kaufman@kaufmanpa.com

*Counsel for Plaintiff Broward Psychology, P.A.  
and all others similarly situated*

# Get the Power of Self-Service

Save time, get better documentation and reduce paper by using Link

Are you using our most powerful online tools? You should be! Link's self-service tools can quickly provide the comprehensive information you need for most UnitedHealthcare benefit plans ---- without the extra step of calling for information. Plus, you can print your activity or record reference numbers for better documentation, and reduce paper costs by submitting your work online!

## Save Time and Increase Productivity\*

If your organization calls UnitedHealthcare 300 times, that's 32.5 hours on the phone. If you shift the 300 calls to Link transactions, your staff will spend only 4.7 hours online. That's a savings of more than 27 hours!

## Superior Documentation

Use the PDF feature on our apps to save or print onscreen information, or record reference numbers for quick and easy documentation of your online submission.

## Save on Paper Costs

Paper and handling costs are a commonly overlooked area for cost reduction in health care. Link tools allow you to submit information online so you don't need to print records and then fax or mail them to us. Plus, you can opt out of mailed delivery of the claim letters available in our Document Vault tool to help reduce paper and the manpower needed to open and organize them.

## Get started today!

To sign in to Link, go to [UHCprovider.com](http://UHCprovider.com) and click on the Link button in the top right corner.

For more information, go to [UHCprovider.com/Link](http://UHCprovider.com/Link).

Register for a webinar at [UHCprovider.com/training](http://UHCprovider.com/training).

New to Link? Go to [UHCprovider.com/newuser](http://UHCprovider.com/newuser).

Call Transaction Time	
Number of calls	300
Average time per call (minutes)	6.5
Total hours	32.5
Link Transaction Time	
Number of transactions	300
Average transaction time (minutes)	0.94
Total hours	4.7
Estimated Time Savings	
Estimated time savings (hours)	27.8

Link: Online self service for care providers



\* Average call time was calculated from a June 2016 UnitedHealthcare call study of pre-service and claims follow-up calls to our call centers and does not include hold time. Average Link transaction times were determined based on June 2015 user app testing.

Insurance coverage provided by or through UnitedHealthcare Insurance Company, All Savers Insurance Company, or their affiliates. Health Plan coverage provided by UnitedHealthcare of Arizona, Inc., UHC of California D3A UnitedHealthcare of California, UnitedHealthcare Benefits Plan of California, UnitedHealthcare of Colorado, Inc., UnitedHealthcare of Oklahoma, Inc., UnitedHealthcare of Oregon, Inc., UnitedHealthcare of Texas, LLC, UnitedHealthcare Benefits of Texas, Inc., UnitedHealthcare of Utah, Inc. and UnitedHealthcare of Washington, Inc. or other affiliates. Administrative services provided by United HealthCare Services, Inc., OptumFix, OptumHealth Care Solutions, Inc., Oxford Health Plans LLC or their affiliates. Behavioral health products are provided by U.S. Behavioral Health Plan, California (USBHPC), United Behavioral Health (UBH) or its affiliates.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BROWARD PSYCHOLOGY, P.A., individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Broward County, FL (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kaufman P.A., 400 NW 26th Street, Miami, FL 33127, (305) 469-5881

DEFENDANTS

UNITED HEALTHCARE SERVICES, INC., a Minnesota corporation

County of Residence of First Listed Defendant Hennepin County, MN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227

Brief description of cause:

Violation of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

May 8, 2018 /s/ Avi R. Kaufman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BROWARD PSYCHOLOGY, P.A., individually
and on behalf of all others similarly situated,

Plaintiff(s)

v.

UNITED HEALTHCARE SERVICES, INC.,
a Minnesota corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) UNITED HEALTHCARE SERVICES, INC.
CT CORPORATION SYSTEM
1200 S. PINE ISLAND ROAD
PLANTATION, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Avi R. Kaufman
Kaufman P.A.
400 NW 26th Street
Miami, FL 33127
(305) 469-5881
kaufman@kaufmanpa.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: May 8, 2018

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [United Healthcare Services Hit with TCPA Suit Over Alleged Junk Faxes](#)

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